IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOSE VELEZ, Plaintiff, v. GARRY M. MCCARTHY, Superintendent of the Chicago Police Department, and THE POLICE BOARD OF THE CITY OF CHICAGO, Defendants.	)	Case No. 15 CH 18601 Honorable Michael T. Mullen Calendar 8

MEMORANDUM OPINION AND ORDER

This matter comes before this Court on Plaintiff Jose Velez's ("Velez") Complaint for Administrative Review, pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq*. On November 19, 2015, Defendant Chicago Police Board ("Board") entered its decision to discharge Velez from his occupation as a City of Chicago police officer. In his timely filed Complaint, Velez asks this Court to, *inter alia*, reverse the Board's decision.

I. Introduction

This case arises from the June 28, 2010 arrest of Lance Conley ("Conley"). Velez was working in his capacity as a City of Chicago police officer on that date. Along with his partners, Officers Ceglarek and Ruiz, Velez was positioned in an unmarked SUV conducting surveillance to determine whether illegal narcotics were being bought and sold in the vicinity of Augusta Boulevard and Lavergne Avenue in Chicago. After Ceglarek retrieved a plastic baggie that was positioned at the base of a no parking sign ("traffic sign") on the northeast corner of Lavergne and Cortez, Velez arrested Conley for being in possession of a controlled substance as it was

determined that the plastic baggie contained heroin. More specifically, Conley was charged with being in possession of less than 15 grams of a controlled substance, namely heroin, a Class 4 felony.

On the date of the June 28, 2010 arrest, Velez authored a detailed summary of the events that led to Conley's arrest in an arrest report. Velez declared and affirmed, "under penalty of perjury," that the facts contained within the arrest report were accurate and to the best of his knowledge, information and/or belief. Subsequent to the June 28, 2010 arrest, Velez testified under oath three separate times relative to the chain of events that led to Conley's arrest. More specifically, on July 22, 2010, Velez testified at Conley's probable cause hearing relative to his underlying surveillance. At the hearing, Velez testified that from his surveillance position, which was approximately 30 to 35 feet away from Conley, he witnessed Conley place a plastic baggie at the base of a traffic sign on the northeast corner of Lavergne and Cortez. Velez further testified at the hearing that after Conley had placed the baggie in the described location, Conley then looked in the direction of the arresting officers and then quickly walked away. Velez maintained under oath that shortly after observing Conley's actions, he and his partner, i.e., Ceglarek, retrieved a plastic baggie that contained heroin from the base of the very traffic sign that he (Velez) had observed Conley place a plastic baggie. In court, Velez identified Conley as the individual that he saw place a plastic baggie into the base of the traffic sign and where the heroin baggie was subsequently found.

On March 24, 2011, the criminal case against Conley proceeded to a bench trial. Velez again testified as to the events that preceded Conley's arrest. Velez maintained that he and his fellow police officers were approximately 30 to 45 feet from the traffic sign when he observed the placement of the plastic baggie. Velez specifically testified that he was seated in the front

passenger seat of an unmarked SUV when he made his observations. Velez testified that from his position in the SUV, he had a clear and unobstructed view of the location where the plastic baggie had been placed. Once again, Velez made an in-court identification of Conley as being the individual who he had personally observed place the heroin baggie beneath the traffic sign.

On the date of his arrest, Conley lived with his wife, Shecarie, directly across the street from where the heroin baggie was found. Somewhat fortuitously, Conley had three fully functional video cameras mounted at the front of his home and which memorialized on videotape all of the events relative to his (Conley's) arrest. The Conley videos were submitted into evidence as defense exhibits during Conley's criminal trial. The Conley videos set forth the events that preceded Conley's June 28, 2010 arrest, as well as Conley's arrest. Conley was then acquitted of the criminal charges that Velez initiated.

Conley subsequently filed a civil suit against the City of Chicago and the arresting officers, including Velez. At his June 6, 2012 discovery deposition, Velez once again described the events that led to Conley's arrest. Velez testified that when he observed the events leading up to Conley's arrest, he was on Augusta (a street that runs generally in an easterly and westerly direction), "just a little east of Lavergne (a street that runs generally in a northerly and southerly direction)." Velez maintained he was 45 feet away from the location where the heroin baggie had been placed.

During his deposition, Velez admitted that based upon his review of the Conley videos, he (Velez) had arrested the wrong man, i.e., Conley. The individual who had actually placed the heroin baggie in the location where it was ultimately found by Ceglarek was one Eddie Lee Jefferson. Nonetheless, in the way of an explanation as to how it was that he could have possibly arrested the wrong man shortly after having made his observations from a clear and unobstructed

vantage point, Velez testified that he arrested Conley, as Conley "matched the description" of the person he saw on the street corner and further volunteered that both Conley and Jefferson had been wearing dark clothing at the time of Conley's arrest.

On September 10, 2014, Velez was interviewed by the City of Chicago's Bureau of Internal Affairs ("BIA"). During this interview and in the presence of his attorney, Velez stated that when he was conducting the underlying surveillance he was in the vicinity of Augusta and Lavergne. On April 22, 2015, the City of Chicago Police Superintendent filed charges with the Board, seeking Velez's discharge. The Superintendent alleged Velez violated Chicago Police Department Rules of Conduct 1, 2, and 14 by providing false testimony, as well as by filing false police reports in relation to Conley's June 28, 2010 arrest. During the hearing that was held on August 14, 17, and 28th of 2015, Velez once again testified to the events that led to Conley's arrest. On November 19, 2015, the Board unanimously found Velez guilty of all charges and discharged him.

II. The Board Hearing

Prior to the Police Board hearing, and in addition to the arrest report that he had prepared essentially contemporaneous with Conley's arrest, Velez had testified under oath on three separate occasions (probable cause hearing; criminal trial; and civil deposition). Additionally, Velez had provided a statement to the BIA as to the events that led to Conley's arrest. Velez had consistently maintained for the several years that preceded the hearing that he had "witnessed" the placement of the heroin baggie beneath the traffic sign. A brief summary of some of the significant testimony and evidence that was submitted during the Board hearing follows.

a. Officer Jose Velez

At the Police Board hearing, Velez once again testified about the events that led to Conley's arrest. Velez again testified that during the underlying surveillance, he was seated in the front passenger seat of a Chevy Tahoe; that Ruiz was seated in the driver's seat; and that Ceglarek was seated in the vehicle's backseat. Velez further testified that although he could not recall the exact position where the SUV was parked or what side of the street the SUV was parked on, he maintained that the SUV was parked in the vicinity of Augusta and Lavergne. In his June 6, 2012 civil deposition, Velez maintained that he was in a stationary position on Augusta, just east of Lavergne, when he witnessed the placement of the heroin baggie. However, during the Police Board hearing, Velez admitted that in order for him to have seen the events that he had previously testified to during the probable cause hearing and during the criminal prosecution, he could not have been on Augusta, just east of Lavergne, because there was no vantage point from that area for him to have seen the traffic sign where the heroin baggie had been placed. In other words, Velez admitted that he could not have witnessed what he had previously testified to if he was on Augusta, just east of Lavergne.

Although Velez had identified Conley twice in court proceedings as the individual that he had witnessed place the heroin baggie at the base of the traffic sign, he suggested at the Police Board hearing that it was understandable that he had misidentified Conley rather than properly identifying Jefferson as the individual who had placed the drugs, as both Conley and Jefferson had been wearing dark clothing. Velez gave this testimony despite having testified twice that he had personally witnessed Conley place the heroin baggie at the base of the traffic sign and despite arresting Conley within minutes of the alleged placement of the narcotics. The Board

ultimately found that, based upon the "totality of the evidence," Velez's testimony at the Police Board hearing "lacked credibility in its entirety."

b. Lance Conley

Conley testified that on the day of his June 28, 2010 arrest, he lived with his wife, Shecarie, at 1028 N. Lavergne, Chicago, Illinois, where he had lived since 1971. Conley's home was essentially directly across the street from where the heroin baggie had been placed and subsequently recovered by Ceglarek. Conley testified that at approximately 4:20 p.m., he was standing outside his neighbor's house at 1024 N. Lavergne near a parked car and talking with a couple of individuals that he knew, when an unmarked SUV pulled to a stop in front of Conley and the other individuals. When the SUV came to a stop, Conley testified that several police officers got out of the SUV and ordered everyone to put their hands on the parked car.

During his testimony, Conley maintained that he had first observed the SUV when it was travelling Northbound on Lavergne. Conley's attention had been drawn to the SUV as it was travelling in the wrong direction on Lavergne. Conley explained that at this location, vehicles were prohibited from travelling Northbound on Lavergne. Conley testified that the SUV had not pulled out of an alley that was located between Cortez and Augusta, but rather that the SUV had travelled from a location further South of the alley and from a location that was closer to Augusta Boulevard. Conley also testified that the SUV had not been parked on Lavergne, as he was aware of his surroundings and would have noticed it.

c. Shecarie Conley

Conley's wife, Shecarie, testified that she was at her home when she saw the SUV being driven Northbound, i.e., in the wrong direction, on Lavergne. Consistent with her husband's testimony, Shecarie testified that when she first saw the SUV, it was being driven from a location

that was South of the alley located between Cortez and Augusta. According to Shecarie, after the officers in the SUV alighted from the vehicle, they proceeded to handcuff an individual Shecarie knew as "Terry." When a police transport arrived, the officers placed "Terry" inside the transport, but Velez let "Terry" go and placed Conley in the police transport. Shecarie testified that as Velez let "Terry" go and placed Conley under arrest, Velez said it was his ("Terry's") "lucky day."

d. Officers Ruiz and Ceglarek

Ruiz testified that he, Ceglarek, and Velez were conducting surveillance in the vicinity of Augusta and Lavergne, and in his opinion, they were in a good position to see the Lavergne and Cortez intersection. But Ruiz admitted that he could not recall exactly where the SUV was located or which way it was parked during the surveillance. Similarly, Ceglarek testified that during the surveillance, the SUV was located in the vicinity of Augusta and Lavergne. However, like Ruiz, Ceglarek could not recall exactly where the SUV was located during the surveillance or which way it was parked. The Board concluded that the testimony of both Ceglarek and Ruiz was "incredible," as they both had testified that they had not made any observations of their own, even though they were both sitting within close proximity to Velez when he "allegedly made his surveillance observations."

e. Hector Arellano

Hector Arrellano, an inspector with the Office of the Inspector General, was assigned to investigate Velez's case in 2011. After reviewing the video footage as well as relevant documentation pertaining to Conley's arrest, Arrellano inspected the Lavergne, Augusta, and Cortez locations in 2012 and also in 2015. Arrellano testified that from the traffic sign, which was set back from East side of Lavergne, he was only able to visualize about four or five houses

to the South of the Conley home. Arrellano further testified that from the traffic sign he could not see Augusta Boulevard, and also could not see the traffic sign from any vantage point at Augusta and Lavergne because a building was blocking his view. Arrellano also testified that the furthest South he was last able to visualize the sign was at 1015-1017 Lavergne, which was north of the alley that was between Cortez and Augusta and which was well north of Augusta Boulevard. Arrellano testified that he used a measuring wheel to make measurements of the distances between various stationary landmarks, such as the distance the traffic sign was from the various locations, including a fire hydrant. Based on the video and his measurements, in Arrellano's opinion, the traffic sign was in the same position during his observations as it had been on June 28, 2010.

f. David J. O'Callaghan

David J. O'Callaghan was a private investigator retained by Velez. After reviewing the video footage and relevant documentation pertaining to Conley's arrest, O'Callaghan conducted his own observations at the Lavergne, Augusta, and Cortez locations on six separate occasions in 2015. In his opinion, the traffic sign had been moved further east since the day of Conley's arrest, although he did not use any measuring implements. O'Callaghan testified, *inter alia*, that from a location just south of 1012 N. Lavergne he was able to see the traffic sign. O'Callaghan also testified that he could see the traffic sign from certain vantage points at Augusta and Lavergne. O'Callaghan admitted none of his videos showed the traffic sign from any of these vantage points, but nevertheless maintained he saw the traffic sign with his own eyes. O'Callaghan further testified that the distance between the northwest corner of Augusta and Lavergne and the northeast corner of Cortez and Lavergne (where the traffic sign was located) was about 300 feet.

g. The Conley Videos

At the hearing, the Conley videos were submitted into evidence for the Board's consideration, as they captured the events that preceded Conley's arrest, as well as Conley's actual arrest. Of some significance, the parties stipulated that the Conley videos depicted the following events that occurred on June 28, 2010:

- Eddie Lee Jefferson retrieved heroin from the base of the traffic sign at various times, including at approximately 4:00 p.m. and at approximately 4:16 p.m.;
- Conley did not retrieve heroin from the base of the traffic sign;
- at approximately 4:22 p.m., officers Velez, Ruiz, and Ceglarek drove their vehicle north on Lavergne, stopped south of the Lavergne and Cortez intersection, and exited;
- between 4:22 p.m. and 4:26 p.m., Velez searched the bases of various traffic signs that were located on the west, northeast, and southeast sides of the Lavergne and Cortez intersection;
- at approximately 4:26 p.m., officers Velez and Ceglarek found a plastic baggie that contained heroin at the base of the traffic sign;
- shortly after the police transport arrived, Jefferson and Townsel were placed into it;
- Conley began to walk away but was stopped by Velez and placed into handcuffs; and
- Jefferson was then removed from the transport and released and Conley was placed into the transport as Conley had been arrested.

The Board concluded that the Conley videos did not support Velez's testimony and in fact undermined the observations that Velez "claimed to have made."

III. The Board's Findings and Decision

Velez filed a motion to strike and dismiss the charges against him, arguing that the charges were untimely and in violation of his due process rights, as well as certain Chicago Police Department General and Special Orders. In his motion, Velez also argued that the charges should be barred by the equitable doctrine of laches and requested that all charges that had been brought against him be dismissed. More specifically, Velez noted that although Conley's arrest occurred on June 28, 2010, he (Velez) had not been charged with the cited violations until April 22, 2015, which was a period of 58 months from the date of the underlying offense. The Board rejected Velez's arguments and unanimously denied his motion.

In its review of the testimony that had been offered, the Board specifically considered Velez's claim that he simply mistook Jefferson for Conley. The Board concluded that Velez could not possibly have seen a small baggie in anyone's hand nor the base of the traffic sign from any vantage point at or near the intersection of Lavergne and Augusta. The Board noted that neither Ceglarek nor Ruiz made any independent observations despite being in the same vehicle as Velez, and that they failed to corroborate Velez's personal observations. The Board noted that the Conley videos clearly depicted both Velez and Ceglarek as they searched multiple locations over a period of time in which they were clearly searching for narcotics, instead of proceeding directly to the traffic sign that Velez had identified as the location where a baggie had been placed. The Board concluded that the Conley videos obviously undermined Velez's testimony that he saw a man place a plastic baggie at a particular location, i.e., the traffic sign. If Velez had actually seen what he said he had seen, Velez and his partners would have gone directly to the traffic sign and recovered the drugs without the delay evidenced within the Conley videos. Again, as to Velez's testimony relative to his observations that led to Conley's arrest, the

Board concluded that it "lacked credibility in its entirety." Based upon its review of the evidence that had been submitted by the parties and after having made certain credibility determinations of the witnesses who had testified, the Board concluded that Velez had committed perjury in violation of 720 ILCS 5/32-2, when he testified at Conley's probable cause hearing and bench trial. Consequently, the Board found Velez guilty on all counts of violating Rule 1 (violation of any law or ordinance).

The Board found Velez guilty on all counts of violating Rule 2 (any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department). The Board concluded that Velez provided false testimony at Conley's probable cause hearing, as well as at Conley's criminal bench trial, and further concluded that Velez had filed false police reports relating to his arrest of Conley. The Board also found Velez guilty on all counts of violating Rule 14 (making a false report, written or oral). Again, the Board concluded Velez provided false testimony and falsified police reports relating to his arrest of Conley. The Board unanimously found that Velez had violated Rules 1, 2, and 14 on all counts. In making a decision relative to the appropriate punishment that should be meted out, the Board weighed Velez's accomplishments and the testimony that had been provided on his behalf against the violations that Velez had committed, and concluded that the seriousness of his misconduct warranted discharge.

IV. Analysis

The Administrative Review Law provides that judicial review extends to all questions of fact and law presented by the entire administrative record. 735 ILCS 5/3-110; *Exelon Corp. v. Dep't of Revenue*, 234 Ill.2d 266, 272 (2009). The administrative record in this case presents the following questions for review: whether the charges against Velez should have been dismissed

because they were untimely filed; whether the Board's findings were against the manifest weight of the evidence; and whether the Board's decision to discharge Velez for cause was appropriate.

a. Timeliness of the Charges

The incident at issue in this case, Conley's arrest, occurred on June 28, 2010. The Superintendent filed the charges against Velez on April 22, 2015—almost 58 months after the incident. The Board issued its findings and decision on November 19, 2015—about 7 months after the charges were filed. Velez contends the charges should have been dismissed because the Superintendent failed to file them in a timely manner, in violation of Chicago Police Department General and Special Orders. More specifically, Velez maintains that the untimeliness of the charges violated his due process rights and required a dismissal of the charges that had been filed against him. Alternatively, Velez argues that because the charges were untimely filed, the equitable doctrine of laches required a dismissal of the charges.

"The due process clause protects fundamental justice and fairness." *Lyon v. Dep't of Children and Family Servs.*, 209 Ill.2d 264, 272 (2004). Procedural due process claims challenge the constitutionality of the specific procedures used to take away a person's life, liberty, or property. *Segers v. Indus. Comm'n*, 191 Ill.2d 421, 434 (2000). Each citizen has a protected interest in his or her right to pursue a trade, occupation, business, or profession. *Lyon*, 209 Ill.2d at 272. "[T]he State must act *reasonably* before depriving a person of an interest protected by the due process clause." *Id.* (emphasis added). "While the core of due process is the right to notice and a meaningful opportunity to be heard, it is a flexible concept and requires only such procedural protections as fundamental principles of justice and the particular situation demand." *Chisem v. McCarthy*, 2014 IL App (1st) 132389, ¶14. Due process claims are reviewed *de novo*.

Velez's argument that the 58-month delay in filing the charges violated his due process rights is unpersuasive. Similar arguments were rejected in both *Chisem* and *Orsa*, which concluded plaintiffs' due process rights had not been violated, despite lengthy filing delays, because they remained employed until the charges were filed, and received notice and a meaningful opportunity to be heard. *Chisem*, 2014 IL App (1st) 132389 at ¶ 15; *Orsa v. Chicago Police Bd.*, 2016 IL App (1st) 121709, ¶ 39. For due process purposes, a delay in filing the charges is fundamentally different than a delay in adjudicating the charges in terms of when the "deprivation" occurs. *Compare* Chisem, 2014 IL App (1st) 132389 at ¶ 15 (no violation despite 33-month delay in filing), *and* Orsa, 2016 IL App (1st) 121709 at ¶ 39 (no violation despite 51-month delay in filing), *with* Morgan v. Dep't of Fin. & Prof'l Regulation, 374 Ill. App. 3d 275, 303 (1st Dist. 2007) (violation caused by 15-month delay in adjudication after plaintiff's clinical psychologist license was suspended).

It should be noted that Velez did not take issue with the timeliness of the actual hearing that commenced on August 14, 2015 (approximately 4 months from the date that the charges had been brought) or the timeliness of the Board's November 19, 2015 final decision (approximately 7 months after the charges had been brought and approximately 3 months after the hearing had been held). The Board clearly came to its decision within a reasonable amount of time after the charges had been filed and after the hearing had concluded.

Velez's due process rights were not violated in this case. From the date that he falsely arrested Conley until the date that he was charged, Velez remained employed as a City of Chicago Police officer. Additionally, Velez received timely notice of the charges and a meaningful opportunity to be heard during a three-day hearing. At the hearing, Velez was well represented by a clearly experienced and capable attorney. In addition to being afforded every

opportunity to cross-examine the Superintendent's witnesses and question the weight that should be given to the exhibits submitted into evidence, Velez had the opportunity to present evidence on his own behalf, which he did.

The equitable doctrine of laches bars a litigant from asserting a claim when the party invoking laches can show both: (1) lack of diligence by the party asserting the claim; and (2) prejudice to the opposing party resulting from the delay. *Tully v. State*, 143 Ill.2d 425, 432 (1991). Laches against governmental entities will generally be imposed only under "compelling," "unusual," or "extraordinary" circumstances. *Van Milligan v. Bd. of Fire & Police Comm'rs*, 158 Ill.2d 85, 90 (1994). Moreover, the decision to invoke laches is generally a discretionary matter. *Id.* at 91. Thus, a reviewing court will not disturb the administrative agency's decision unless it constitutes an abuse of discretion. *Chisem*, 2014 IL App (1st) 132389 at ¶ 18.

Velez contends he was prejudiced because, due to the passage of time, he and his partners could not remember critical details about their exact surveillance location on the day of Conley's arrest. A substantial delay in filing alone does not warrant the invocation of laches without a specific finding of prejudice. *See Van Milligan*, 158 Ill.2d at 91. Prejudice may be found after a substantial delay when factual disputes rest solely on recollection testimony. *See Mank v. Bd. of Fire & Police Comm'rs*, 7 Ill. App. 3d 478, 485-86 (5th Dist. 1972). However, courts have refused to invoke laches, despite substantial delays, when material witnesses are available and have the benefit of reviewing prior written statements. *See, e.g., People ex rel. Jaworski v. Jenkins*, 56 Ill. App. 3d 1028, 1033 (1st Dist. 1978); *Bultas v. Bd. of Fire & Police Comm'rs*, 171 Ill. App. 3d 189, 195 (1st Dist. 1988).

Velez has failed to show he was prejudiced by the delay in filing. At the Police Board hearing, Velez had prior written statements available to him, including his arrest report and original case incident report, which he authored contemporaneously with his observations leading to Conley's arrest. Further, Velez's prior testimony was available, which included his testimony at Conley's probable cause hearing and bench trial, along with his civil deposition testimony and BIA interview. Velez's partners, Ceglarek and Ruiz, had the benefit of their BIA interview transcripts and were available to and did testify on Velez's behalf. Velez argues he was prejudiced because neither he nor his partners can remember their exact surveillance location. However, Velez testified at the hearing, as well as during both his civil deposition and BIA interview, that he and his partners were in the vicinity of Augusta and Lavergne, which is corroborated by the video footage. The Board concluded that Velez could not have seen what he claims he saw from *any* vantage point at the Augusta and Lavergne intersection. Therefore, any testimony regarding Velez's exact location in the area of Augusta and Lavergne would not have made any difference as he simply could not have seen what he testified that he had seen from anywhere near this location. In any event, this case does not present the "compelling," "unusual," or "extraordinary" circumstances necessary to invoke laches. Accordingly, the Board did not abuse its discretion in declining to invoke the equitable doctrine of laches and dismiss the charges.

Finally, Velez argues that the charges should be dismissed as the Superintendent violated General Order 08-01 and Special Order 08-01-01. The Board declined to dismiss the charges on these grounds. General Order 08-01 demands "prompt" and "thorough" investigations into allegations of misconduct, while Special Order 08-01-01 requires investigations to be completed as soon as possible within a reasonable amount of time. The Board concluded there had been no

material violation because neither order sets an absolute deadline. Moreover, even if a violation occurred, nothing suggests this alone warranted automatic dismissal of the charges. *See Chisem*, 2014 IL App (1st) 132389 at ¶ 17 (concluding that violation of General Order 93-03, a prior version of G08-01 and S08-01-01, did not warrant automatic dismissal of the charges); *Orsa*, 2016 IL App (1st) 121709 at ¶ 42 (same). Therefore, this Court will not disturb the Board's decision on this issue.

b. The Board's Findings and Decision

Review of an administrative agency's decision regarding discharge involves a two-step analysis. The initial inquiry is whether the agency's findings of fact are contrary to the manifest weight of the evidence. *Kappel v. Police Bd. of Chicago*, 220 App. 3d 580, 588 (1st Dist. 1991). The findings and conclusions of the agency are required to be treated as *prima facie* correct. *Id.* An agency's decision is against the manifest weight of the evidence only if "no rational trier of fact could have agreed with the agency's decision and an opposite conclusion is clearly evident." *Daniels v. Police Bd.*, 338 Ill. App. 3d 851, 858 (1st Dist. 2003). "Conflicts in witness testimony do not constitute a sufficient reason to reverse an administrative agency's decision, since the agency's responsibility is to resolve the conflicting evidence." *Collura v. Bd. of Police Comm'rs*, 135 Ill. App. 3d 827, 839 (2d Dist. 1985). Although the manifest weight of the evidence is a high standard of review, a reviewing court must examine the entire record and set aside a decision that is unsupported in fact. *Boom Town Saloon Inc. v. City of Chicago*, 384 Ill. App. 3d 27, 32 (1st Dist. 2008). However, a reviewing court may not substitute its own judgment, and if the record contains evidence to support the agency's decision, it must be affirmed. *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill.2d 76, 88 (1992).

The next step is determining whether the agency's findings of fact provide a sufficient basis for its determination that discharge for cause is warranted. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 668 (1st Dist. 2011). "[A] reviewing court defers to the administrative agency's expertise and experience in determining what sanction is appropriate to protect the public interest." *Abrahamson*, 153 Ill.2d at 99. A reviewing court may not consider whether it would have imposed a more lenient sentence. *Krocka v. Police Bd. of Chicago*, 327 Ill. App. 3d 36, 48 (1st Dist. 2001). Rather, a reviewing court must determine "whether the Board acted unreasonably or arbitrarily by selecting the type of discipline that was inappropriate or unrelated to the needs of service." *Siwek v. Police Bd.*, 374 Ill. App. 3d 735, 738 (1st Dist. 2007) (internal quotations omitted).

Velez was charged with violating a criminal law by committing perjury at Conley's probable cause hearing and bench trial. The Superintendent, therefore, had the burden of proving Velez's guilt by a preponderance of the evidence. *See Clark v. Bd. of Fire & Police Comm'rs*, 245 Ill. App. 3d 385, 392 (3d Dist. 1993); *Teil v. City of Chicago*, 284 Ill. App. 3d 167, 170 (1st Dist. 1996). "A person commits perjury, when under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes a false statement, material to the issue or point in question, knowing the statement is false." 720 ILCS 5/32-2(a).

Most of the predicate elements to establish perjury are clearly supported by the evidence contained within the record. Velez's statements at both Conley's probable cause hearing and his bench trial were under oath. Velez's statements that he witnessed Conley handle a plastic baggie of heroin were proven to be false, and Velez admitted as much. Further, Velez's statements were

material because they tended to prove Conley's guilt in each proceeding. *See People v. Acevedo*, 275 Ill. App. 3d 420, 423 (2d Dist. 1995).

Velez contends the Board's finding that Velez knew his statements were false is subject to the "clearly erroneous" standard of review because it is a mixed question of fact and law. Mixed questions of fact and law "are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard." *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill.2d 200, 211 (2008) (internal quotations omitted). Mixed questions of fact and law are subject to the "clearly erroneous" standard of review and will be reversed only if a reviewing court is left with a definite and firm conviction that the agency made a mistake. *AFM Messenger Serv. Inc. v. Dep't of Employment Sec.*, 198 Ill.2d 380, 395 (2001).

Contrary to Velez's position, the question of whether he knew his statements were false at the time he made them is a question of fact, not a mixed question of fact and law. *Taylor v. Police Bd.*, 2011 IL App (1st) 101156, ¶ 27. Velez correctly points out that a case may implicate different standards of review. For example, the element of materiality may be considered a question of law subject to the *de novo* standard of review. *See e.g. id.* at ¶ 47 (concluding that whether materiality was established when false statement merely impacted the witness's credibility was question of law). Here, however, the only issue is whether Velez knew his statements were false, which was a contested issue of fact that was clearly decided by the Board. The Board's conclusion that Velez knew his statements were false when he made them is then reviewed by this Court to determine whether this conclusion is against the manifest weight of the evidence.

Based on a review of the entire record, the Board's findings were not against the manifest weight of the evidence. The Board found Velez guilty of various counts of committing perjury and falsifying police reports based on its determination that Velez could not have seen anyone place a plastic baggie at the base of the traffic sign from any vantage point at the Augusta and Lavergne intersection. At the Police Board hearing, Arrellano provided evidence that from any potential vantage point near the Augusta and Lavergne intersection, the base of the traffic sign could not be seen. In fact, a nearby building obstructed any view of the traffic sign from that general location. Velez testified at his civil deposition, BIA interview, and also at the Police Board hearing that he and his partners were conducting surveillance in the vicinity of Augusta and Lavergne when he observed the events leading to Conley's arrest. Ceglarek and Ruiz also testified at the Police Board hearing that during the surveillance, they were in the vicinity of Augusta and Lavergne. The Conley videos further establish that Velez and his partners in the SUV were obviously in the vicinity of Augusta and Lavergne when they were conducting the "surveillance" as the SUV did not appear in the Conley videos until shortly prior to Conley's arrest. This clearly meant that Velez and his partners had to have been in the vicinity of Augusta and Lavergne when conducting the "surveillance." In other words, they could not have and did not see Conley or anyone else place anything at the base of a traffic sign, as they were not in a position where they could have seen the traffic sign. Consequently, the Conley videos clearly undermined Velez's testimony.

In arriving at its conclusions, the Board made certain credibility determinations, which this Court will not disturb. *See Morgan v. Dep't of Fin. & Prof'l Regulation*, 374 Ill. App. 3d 275, 287 (1st Dist. 2007) ("[I]t is not our function to reevaluate witness credibility or resolve conflicting evidence"). The Board concluded that Velez was not credible at all, based on the

discrepancies between his testimony and the contents of the Conley videos. The Board observed that Ceglarek and Ruiz "incredibly" failed to make any independent observations of their own relative to the events that led to Conley's arrest, despite being in "close proximity" to Velez while he (Velez) made his alleged surveillance observations. Again, it is not this Court's role to reweigh these credibility determinations.

Velez's arguments that he simply made a mistake as to the identity of the person he saw and that he lacked any motive for providing false statements do not address the Board's findings. Although it would certainly have been probative, the Board did not have to prove that Velez had a motive for providing false statements. The Board concluded that if Velez didn't see anyone handle or place a baggie that contained heroin at the base of the traffic sign, then he must have known his statements at Conley's probable cause hearing and bench trial were false. Velez must also have known that both his arrest and case incident reports were false on the very day that he authored them. The Conley videos provided sufficient evidence to support the Board's findings that Velez knew his statements under oath were false and that he had intentionally falsified police reports. Even if the less deferential "clearly erroneous" standard of review does apply, as Velez contends, this Court does not have a definite and firm conviction that a mistake was made based on the evidence that is contained within the record. Consequently, even employing the "clearly erroneous" standard of review, this Court's decision would be unchanged and it would affirm the Board's decision.

The Board's decision to discharge Velez was not made arbitrarily or unreasonably, and it was not inappropriate or unrelated to the requirements of service as a police officer. Cause for discharge has been defined as a "substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and

which law and sound public opinion recognize as good cause for his no longer holding the position." *Collins v. Bd. of Fire & Police Comm'rs*, 84 Ill. App. 3d 516, 521 (2d Dist. 1980). "It is apparent that a police officer who does not abide by the laws that he has a duty to enforce will impair the discipline and efficiency of the police force." *Jones v. Civil Serv. Comm'n*, 80 Ill. App. 3d 74, 76 (5th Dist. 1979). Moreover, "[a] public finding that an officer had lied on previous occasions is detrimental to the officer's credibility as a witness and as such may be a serious liability to the department." *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011). The Board determined that Velez's conduct, which included committing perjury and intentionally falsifying police reports, was serious enough to warrant his discharge, despite his accomplishments as a police officer and positive evaluations. The Board was in the best position to make this determination and nothing suggests it was incorrect based on its findings.

V. Conclusion

The Board's findings and conclusions were not against the manifest weight of the evidence. Based on its findings, the Board's decision to discharge Velez was appropriate.

IT IS, THEREFORE, HEREBY ORDERD THAT:

1. Plaintiff Jose Velez's Complaint for Administrative Review is denied;
2. The Board's decision is affirmed;
3. The previously set status date of October 5, 2016 is stricken.

ENTERED:

Judge Michael T. Mullen

OCT 3 - 2016

Circuit Court-2084

Judge Michael T. Mullen, No. 2084